

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

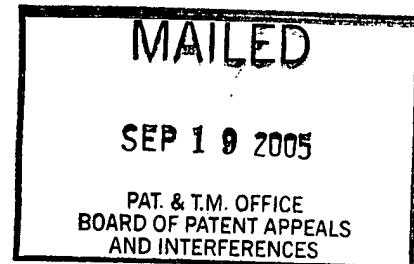
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte NICK (NICHOLAS SHEPPARD) BROMER

Appeal No. 2005-0040
Application No. 09/995,097

HEARD: May 18, 2005



Before PATE, MCQUADE, and BAHR, Administrative Patent Judges.

PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2, 3, 5, 6, 9, and 11-16 and the examiner's refusal to allow claim 17 as amended after final rejection. Claims 4, 7 and 10 stand withdrawn from consideration as subject to a restriction requirement. The appeal with respect to claim 8, the only other remaining claim in the application, was withdrawn by the appellant at the oral hearing. These claims comprise all the claims remaining in the application.

The claimed subject matter is directed to a skate having a braking mechanism that is actuated by movement of the skater's toe in the upward direction.

Claim 2, reproduced below, is further illustrative of the claimed subject matter.

2. For a user having a toe and standing on a skate, a skate braking mechanism comprising:

a brake; and

a lifter connected to the brake and pressable upward by the toe of the user to actuate the brake;

whereby the brake connected to the lifter is actuated according to a natural motion of the user to maintain balance.

THE REFERENCES

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Carlsmith	5,232,231	Aug. 3, 1993
Intengan	6,053,511	Apr. 25, 2000

THE REJECTIONS

Claims 2, 3, 5, 6, 9, and 11-17 are rejected under 35 U.S.C. § 112, first paragraph. According to the examiner, these claims contain subject matter which was not set out in the specification in such a way as to enable one skilled in the art to make and use the invention.

Claims 2, 3, 12 and 16 stand rejected under 35 U.S.C. § 102(b) as anticipated by Intengan.

Claim 16 is rejected under 35 U.S.C. § 102(b) as anticipated by Carlsmith.

The appeal of the rejection of claim 8 was withdrawn by appellant during oral argument at final hearing.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have determined that the 35 U.S.C. § 112, first paragraph rejection of all claims on appeal is not well founded. Additionally, we affirm the 35 U.S.C. § 102 rejection of claims 2, 3 and 12 as anticipated by Intengan and the rejection of claim 16 as anticipated by both Intengan and Carlsmith. Our reasons follow.

Turning to the rejection of 35 U.S.C. § 112, it appears that the examiner's main objection is that the disclosure including the Figures does not make it evident how brake arm 140 can be outside the plane of the wheels where it attaches to pivot 130 and still be in a plane to engage front wheel W1. We are in agreement with the appellant that based on the drawing and the disclosure on pages 7 and 8 of the specification, one of ordinary skill would be able to manufacture and use the claimed subject matter without undue experimentation. We are of the view that the manufacture of the braking mechanism of Figure 1 is well within the ordinary skill in this art.

Turning to the anticipation rejections, we will sustain the rejection of claim 2 based on the lack of novelty over the Intengan reference and the claims rejected

therewith. It is our finding that Intengan discloses a brake for an inline skate. The skate has a boot 44 rigidly mounted to a base 52A on which a plurality of inline wheels 57, 58, 59, 60 are mounted for rotation. A liner in the boot is provided with an opening in order to allow the skater's foot to articulate at will to affect the braking. The change in foot position shown in Figures 2A and 3A shows how braking is actuated. We note from the Figures, that as the foot is arched, the rear of the toe is correspondingly lifted to actuate the brake. In our view, this fully satisfies the functional language of appellant's claim.

Moreover, in our view, the only structure called for in appellant's claim 2 is that of a lifter connected to the brake. Note that the lifter is merely described as pressable upward. In our view, this is a clear example of a claim limitation directed to things which may or may not be done. See In re Collier, 397 F.2d 1003, 158 USPQ 266, 268 CCPA 1968.

Additionally, we are cognizant of the argument made by the examiner that the appellant on page 12 of specification states that the invention contemplates activation by any lifting action of the front portion of the foot. This lifting of the front portion of the foot is exactly what Intengan describes.

Accordingly, we sustain the anticipation rejections of claims 2, 3, 12 and 16 under 35 U.S.C. § 102 as anticipated by Intengan.

Turning to claim 16, we note that the claim requires a brake and a means for actuating the brake by pressing upwardly the toe of the user. Carlsmith discloses an inline skate wherein the boot is pivotable about axle 23 with respect to the frame which mounts the wheels. When the user rocks his or her foot by moving the toes upwardly and the heel downwardly the brake of Carlsmith is actuated. Accordingly, we agree with the examiner that the disclosure of Carlsmith anticipates the subject matter of claim 16.

SUMMARY

The rejection of all claims on appeal under 35 U.S.C. § 112, first paragraph is reversed.

The rejection of claims 2, 3, 6, 12 and 16 under 35 U.S.C. § 102 as anticipated by Intengan is affirmed.

The rejection of claim 16 under 35 U.S.C. § 102 as anticipated by Carlsmith is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

WILLIAM F. PATE, III
Administrative Patent Judge

WILLIAM F. PATE, III
Administrative Patent Judge

Administrative Patent Judge

JOHN P. MCQUADE
Administrative Patent Judge

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) BOARD OF PATENT
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